IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4392 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL VINUBHAI UMEDBHAI & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR Hemang Raval for Petitioner(s) : 1 - 3.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR MUKUND M DESAI for Respondent(s) : 3 - 4.
NOTICE SERVED BY DS for Respondent(s) : 5,
MR HS MUNSHAW for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/01/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the petitioners have prayed for an appropriate writ, order or direction directing the respondents No. 1 and 2 to take immediate action against the

respondents No. 3 and 4 School management and further to see that the said respondents, i.e., respondents No. 3 and 4 run the Primary School and students of Standard-V are admitted and accommodated.

2. It was the contention on behalf of the petitioners that without obtaining any permission from the competent authority the respondents No. 3 and 4 just abruptly closed down the primary school and they have refused to give admission to wards of the petitioners and other village people in Standard-V. It is also the contention on behalf of the petitioners that in the nearby area there is no primary school and therefore if the respondents No. 3 and 4 close down the school in that case the students will be deprived of the primary school facility. This Court passed an interim order on 16.7.1999 which reads as under;

> “Mr. Mamta Vyas for A..D Oza for the petitioners.
> Mr. V.K. Joshi for Mr. M.M. Desai for respondent nos. 3 and 4.
>
> Mr. H.S. Munshaw for respondent No.6.
> No one appears on behalf of respondent no. 1, 2 & 5.
> Mr. B.Y. Mankad, ld. AGP who had appeared on behalf of respondents nos.1,2 & 5 on the last date of hearing on 8th July 1999 pleads no instruction today and that it is Mr. H.C. Patel, Govt.Solicitor is appearing for respondents nos. 1,2

and 5.

It is given out by Mr. Munshaw on behalf of District Panchayat, Mehsana that the respondents nos. 3 and 4 have closed down the classes of Std. V, VI, and VII although they are being given grant-in-aid by the Government. They have also not taken any permission to that effect from the concerned authorities. The respondents nos. 3 and 4 have not cared to file any reply so far. In the facts and circumstances of this case, the respondents nos. 3 and 4 are directed to admit the students in Std. V, VI and VII and continue such classes. In case the respondents nos. 3 and 4 fail to start such classes immediately within a week's time from today, it will be open for the concerned District Primary Education Officer to take such appropriate action against the respondents nos. 3 and 4 as it may deem fit including the question of recommending the Government to stop the grant-in-aid. Direct service is permitted."

3. Today, when the matter is called out, learned advocate appearing on behalf of the respondents, except the learned AGP, are absent. Under the circumstances, in view of the aforesaid interim order dated 16.7.1999 and more particularly in view of the fact that nothing is on record to suggest that any permission has been obtained by the respondents No. 3 and 4 for closing down the primary

school, by way of final order, in terms of the interim order, the respondents, more particularly respondents No. 3 and 4, are directed not to close the down the primary school run by them without prior permission under the provisions of the Bombay Primary Education Act and the Rules. If any such application is made, the respondent No.2 and/or appropriate authority is directed to consider the same in accordance with law and on merits considering the interests of the village people and the students. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.